

HOUSE BILL 2812
By Matheny

AN ACT to enact the "Tennessee Comprehensive Methamphetamine Prevention, Treatment and Control Act of 2004"; to create offense of possessing certain precursor substances; and to amend various provisions of Tennessee Code Annotated necessary to implement the provisions of this act.

WHEREAS, the Tennessee General Assembly recognizes that the clandestine manufacture of the illegal drug methamphetamine has become a scourge upon the State of Tennessee; and

WHEREAS, methamphetamine will soon be, if it is not already, every bit as much a threat to the people of Tennessee as cocaine; and

WHEREAS, persons engaged in clandestine methamphetamine manufacture routinely endanger children, their neighbors, and other innocent persons; and

WHEREAS, the hazardous materials generated during the clandestine manufacture of methamphetamine pose a great threat to Tennessee's environment, and impose a significant burden on innocent property owners; and

WHEREAS, this general assembly recognizes that strong treatment and prevention programs for the victims of methamphetamine manufacture and addiction are as important to combating the spread of methamphetamine as tougher penalties for violators; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Tennessee Comprehensive Methamphetamine Prevention, Treatment, and Control Act of 2004".

SECTION 2. Tennessee Code Annotated, Title 39, Chapter 17, Part 4, is amended by adding the following as a new, appropriately designated section:

39-17-4__.

(a) It is an offense for a person to possess, whether acquired through theft or other means, any substance, with the intent to:

(1) Use such substance in the manufacture of a Schedule I or Schedule II controlled substance; or

(2) To knowingly convey such substance to another for use in the manufacture of a Schedule I or Schedule II controlled substance.

(b) In determining whether a particular substance is possessed with the intent required to violate subsections (a)(1) and (2) of this section, the court or other authority making such determination shall, in addition to all other logically relevant factors, consider the following:

(1) Statements by the owner or anyone in control of the substance concerning its use;

(2) Prior convictions, if any, of the owner or of anyone in control of the substance for violation of any state or federal law relating to the sale or manufacture of controlled substances;

(3) Instructions or descriptive materials of any kind accompanying the substance or found in the owner or controlling person's possession concerning, explaining, or depicting its use;

(4) The manner in which the substance is displayed or offered for sale;

(5) The quantity and location of the substance considered in relation to the existence and scope of legitimate uses for the substance in the community; and

(6) Expert testimony concerning the substance's use.

(c) This section shall not apply where possession was by a person authorized by this part and title 53, chapter 11, parts 3 and 4 to dispense, prescribe, manufacture or possess the controlled substance in question.

(d)

(1) A violation of this section is a Class E felony.

(2) Notwithstanding subdivision (1), where the substance possessed is any mixture or formulation containing ephedrine, a violation of this section shall be graded as if the mixture or formulation containing ephedrine was a Schedule II controlled substance, with penalties provided by weight as set forth in 39-17-417.

SECTION 3. Tennessee Code Annotated, Section 39-15-401, is amended by adding the following language as subsection (b) and by relettering subsequent subsections appropriately:

(b)

(1) A person who knowingly allows a child to be present within a structure where the act of creating methamphetamine, as scheduled in §39-17-408(d)(2), is occurring, is presumed to have neglected the child so as to adversely affect the child's health and welfare for purposes of subsection (a).

(2) A violation of subdivision (1) is a Class E felony if the child is over six (6) years of age.

(3). A violation of subdivision (1) is a Class D felony if the child is six (6) years of age or less.

SECTION 4. Tennessee Code Annotated, Section 39-17-417(c), is amended by deleting the existing language and substituting instead the following:

(c) A violation of subsection (a) with respect to:

(1) Cocaine or methamphetamine is a Class B felony if the amount involved is point five (.5) grams or more of any substance containing cocaine or methamphetamine and, in addition thereto, may be fined not more than one hundred thousand dollars (\$100,000); and

(2)

(A) Any other Schedule II controlled substance, including cocaine or methamphetamine in an amount of less than point five (.5) grams, is a Class C felony and, in addition thereto, may be fined not more than one hundred

thousand dollars (\$100,000); provided, that if the offense involves less than point five (.5) grams of a controlled substance containing cocaine or methamphetamine but the defendant carried or employed a deadly weapon as defined in § 39-11-106, during commission of the offense or the offense resulted in death or bodily injury to another person, such offense is a Class B felony.

(B) As a part of any sentence imposed for a violation of subsection (a)(1) involving a controlled substance listed in § 39-17-408(d)(2), the court shall require the defendant to make restitution to any governmental entity for the costs reasonably incurred in cleaning the area in which the offense occurred and in rendering such area safe for human use.

SECTION 5. Tennessee Code Annotated, Section 39-17-417(i)(10), is amended by deleting the existing language and substituting instead the following:

(10) Twenty-six (26) grams or more of any substance containing amphetamine or methamphetamine or any salt of an optical isomer of amphetamine or methamphetamine;

SECTION 6. Tennessee Code Annotated, Section 39-17-417(j)(10), is amended by deleting the existing language and substituting instead the following:

(10) Three hundred (300) grams or more of any substance containing amphetamine or methamphetamine or any salt of an optical isomer of amphetamine or methamphetamine;

SECTION 7. This act shall take effect on July 1, 2004, the public welfare requiring it.